OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:	) OTA Case No. 19054756
GLADIS MORALES-COLLINS	)
	)
	)

OPINION

Representing the Parties:

For Appellant: Gladis Morales-Collins

For Respondent: John E. Yusin, Tax Counsel IV

S. HOSEY, Administrative Law Judge: Pursuant to California Revenue and Taxation Code (R&TC) section 19045(a), Gladis Morales-Collins (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing $2,884 in additional tax, plus applicable interest, for the 2012 tax year.

Appellant waived her right to an oral hearing and therefore the matter is decided based on the written record.

ISSUES

1. Whether appellant has shown error in the proposed assessment of additional tax.
2. Whether appellant has shown that interest should be abated.

FACTUAL FINDINGS

1. Appellant and her husband[1] filed a timely joint 2012 California income tax return, reporting combined wages of $142,477, federal adjusted gross income (AGI) of $147,281, California itemized deductions of $45,208, and California taxable income of $96,675.
2. On a federal Schedule A, the couple listed "job expenses and certain miscellaneous deductions" totaling $32,743 (line 27), which consisted of unreimbursed employee

[1] Although appellant and her husband filed a joint 2012 California income tax return, only appellant signed the appeal letter; thus, only appellant is listed as a party to this appeal.

expenses of both appellant and her husband totaling $35,189, tax preparation fees of $500, and a subtraction ($2,946) for two percent of AGI.

3. As for appellant's alleged unreimbursed employee expenses, appellant, a "legal document preparer" for a business titled "Charles D. Naylor, a professional," listed vehicle expenses of $1,943; parking, tolls, and transportation expenses totaling $850; travel expenses of $2,900; business expenses (excluding meals and entertainment) of $13,270; and meals and entertainment expenses of $900.

4. As for her husband, who was employed as a customer technician for Verizon Services Corporation (hereinafter, Verizon), the couple reported unreimbursed employee business expenses (excluding meals and entertainment) of $15,326.

5. In an initial contact letter dated December 8, 2015, FTB requested substantiation of the couple's claimed job expenses and certain miscellaneous itemized deductions.[2]

6. The couple responded to FTB's initial contact letter via correspondence dated February 15, 2016.[3]

7. Subsequently, FTB issued an NPA dated March 10, 2016, which disallowed the claimed deductions of $32,743 (line 27) and set forth an additional tax of $3,027, plus applicable interest.

8. The couple filed a timely protest letter dated May 5, 2016.

9. With their protest letter, the couple provided a letter dated March 15, 2016, from Mike Smith, the husband's supervisor at Verizon, who asserted that a condition of the husband's employment was to purchase and maintain his work uniform. Further, the supervisor asserted that the husband had the option of purchasing additional safety gear, tools, and supplies. The supervisor also asserted, however, that the husband was expected to pay for his expenses through his wages.

10. During the protest proceedings, the couple also submitted an amended joint 2012 California income tax return (Form 540X), along with a copy of an amended joint 2012 federal income tax return (Form 1040X), wherein the couple asserted for the first time that a portion of their previously claimed expenses represented Schedule C business

[2] A copy of the initial contact letter dated December 8, 2015, is not located in the appeal record, but it is referred to on page two of the Notice of Proposed Assessment (NPA).

[3] A copy of the couple's correspondence dated February 15, 2016, is not part of the appeal record, but it is referred to on page two of the NPA.

expenses, as opposed to unreimbursed employee business expenses originally claimed as itemized deductions on Schedule A.

11. In a Schedule C provided with the couple's amended 2012 return, appellant listed her profession as a "consultant/legal document preparer." Further, appellant listed the following Schedule C business expenses: car and truck expenses totaling $1,672; supplies of $1,944; utilities of $816; and other expenses of $2,912, which consisted of "business attire and upkeep" expense of $1,800, training expenses of $212, and office expenses of $900.

12. In a statement provided during protest, appellant asserted that in addition to being an employee of Charles D. Naylor, appellant operated a separate Schedule C business wherein she provided paralegal-type services. Appellant stated, however, that she discontinued the business because of the low income involved.[4]

13. In a separate Schedule C provided with the couple's amended 2012 return, the husband listed his profession as a "telephone technician." Further, the husband set forth the following Schedule C business expenses: car and truck expenses totaling $3,508; supplies of $3,641; utilities of $544; and other expenses of $3,719, which consisted of training expenses of $2,029, clothing expenses of $512, "work shop" expenses of $788, and storage area expenses of $390.

14. In a statement provided during protest, the husband stated that in addition to being an employee of Verizon, he operated a separate Schedule C business wherein he provided internet and telephone connection services. The husband indicated, however, that he discontinued the business. The husband also provided a listing of the alleged Schedule C business miles he drove in 2012.

15. After reviewing the matter, FTB revised the NPA via a Notice of Action (NOA) dated March 28, 2019, wherein FTB disallowed deductions totaling $31,206 and set forth an additional tax of $2,884, plus applicable interest.

16. In response, appellant filed this timely appeal.

[4] On the Schedule C, she reported income of just $354, claimed expenses related thereto of $7,344, and a loss of $6,990.

DISCUSSION

Issue 1: Whether appellant has shown error in the proposed assessment of additional tax.

FTB's determinations are presumed correct, and the taxpayer bears the burden of proving that the determinations are erroneous. (See *New Colonial Ice Co. v. Helvering* (1934) 292 U.S. 435; *Appeal of Myers* (2001-SBE-001) 2001 WL 37126924.) Unsupported assertions cannot satisfy the taxpayer's burden of proof. (*Appeal of Magidow* (82-SBE-274) 1982 WL 11930.) Tax returns are not proof of the statements made therein. (*Bruno v. Commissioner,* T.C. Memo. 1990-109.)

Business Expenses

Internal Revenue Code (IRC) section 162(a) authorizes a deduction for '"all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business.'" (*Roberts v. Commissioner*, T.C. Memo. 2012-197.)[5] A trade or business expense is ordinary for purposes of IRC section 162 if it is normal or customary within the particular trade, business, or industry, and is necessary if it is appropriate and helpful for the development of the business. (*Roberts v. Commissioner, supra*.) In contrast, personal, living, or family expenses are generally nondeductible. (*Roberts v. Commissioner, supra*; IRC, § 262.)

In certain circumstances, the taxpayer must meet specific substantiation requirements to be allowed a deduction under IRC section 162. (*Roberts v. Commissioner, supra*; see, e.g., IRC, § 274(d).) IRC section 274(d) requires that the following types of expenses must be substantiated by adequate records or sufficient corroborating evidence: (1) any travel expense, including meals and lodging away from home; (2) any item with respect to an activity in the nature of entertainment, amusement, or recreation; (3) an expense for gifts; or (4) the use of "listed property," as defined in IRC section 280F(d)(4), which includes passenger automobiles. (*Roberts v. Commissioner, supra*.) To qualify for a deduction, the taxpayer must substantiate an expense with adequate records or sufficient evidence to corroborate the taxpayer's own statement as to: (1) the amount of the expense or other item; (2) the time and place of the travel, entertainment, amusement, recreation, or use of the property, or the date and description of the gift; (3) the business purpose of the expense or other item; and (4) the business relationship to

[5] IRC sections 162, 262, 274, and 280F are generally incorporated into California law at R&TC sections 17071 and 17201.

the taxpayer of the persons entertained or receiving the gift. (*Roberts v. Commissioner, supra*; IRC, § 274(d).) The tax court has held that "[r]eceipts often fail as proof because they don't show any particular business purpose." (*H & M, Inc. v. Commissioner*, T.C. Memo. 2012-290, at fn. 17.)

Where the heightened requirements discussed above do not apply, however, a court may allow the deduction of a claimed expense even where the taxpayer is unable to fully substantiate it, if the court has an evidentiary basis for doing so. (*Roberts v. Commissioner, supra*, citing *Cohan v. Commissioner* (2d Cir. 1930) 39 F.2d 540, 543-544.) This is called the *Cohan* rule. (See *Perry v. Commissioner*, T.C. Memo. 2012-237.) The *Cohan* rule can be summarized as follows: if a taxpayer establishes that he or she paid or incurred a deductible business expense but does not establish the amount, a court may approximate the amount of the allowable deduction, bearing heavily against the taxpayer whose inexactitude is of his or her own making. (*Roberts v. Commissioner*, *supra*.)

Unreimbursed Employee Business Expenses

A common law employee is not entitled to claim business expenses on Schedule C. (*Feaster v. Commissioner*, T.C. Memo. 2010-157.) An individual performing services as an employee generally may deduct expenses incurred in the performance of such services as itemized deductions on Schedule A. (*Richards v. Commissioner*, T.C. Memo. 2014-88.) However, unlike Schedule C deductions, Schedule A deductions are subject to various limitations. (*Ibid.*) For example, employee business expenses can be deducted only to the extent those expenses exceed two percent of the taxpayer's AGI under IRC section 67(a).[6] (*Richards v. Commissioner*, *supra*.) In order to deduct expenses incurred in connection with the performance of services as an employee, a taxpayer must not have the right to reimbursement for such expenses from his employer. (*Ibid*.)

Schedule C - In General

In general, a taxpayer takes gross receipts and then subtracts cost of goods sold to arrive at gross income/gross loss. (*Kazhukauskas v. Commissioner*, T.C. Memo. 2012-191.) Afterwards, the taxpayer will subtract business expenses to arrive at net profit/net loss. (*Ibid*.)

[6] IRC section 67 is generally incorporated into California law at R&TC section 17076.

Analysis

Appellant asserts that she is unable to locate any documents to support the couple's claimed deductions due to their relocation from one home to another home in May 2014. Nevertheless, FTB concedes on appeal that the adjustment (increase) to the couple's income should be reduced to $30,638, as opposed to $31,206 as set forth in the NOA.

In her appeal letter, it also appears that appellant believes that her claimed expense deductions were disallowed because she failed to separate her alleged business expenses from her unreimbursed employee expenses on the return. Appellant is mistaken.

Appellant has not shown that she meets all the above-mentioned requirements for claiming either a business or unreimbursed employee expense deduction. Other than the couple's unsupported assertions, appellant has not provided any evidence for our consideration (e.g., invoices, receipts, cancelled checks, bank statements showing that the alleged expenses were actually incurred/paid and that were deductible business expenses, as opposed to personal expenses). In the absence of corroborating evidence, we decline to accept appellant's self-serving assertions in this matter. Therefore, appellant's failure to substantiate the couple's claimed expenses means that they are not entitled to deduct those expenses.

Issue 2: Whether appellant has shown that interest should be abated.

Appellant requests that interest be abated due to the couple's diligent attempts to comply with FTB's requests. However, imposition of interest is mandatory; it is not a penalty, but is compensation for appellant's use of money after it should have been paid to the state. (*Appeal of Yamachi* (77-SBE-095) 1977 WL 3905.) There is no reasonable cause exception to the imposition of interest. (*Appeal of Jaegle* (76-SBE-070) 1976 WL 4086.) Here, appellant has not alleged (or demonstrated) that she comes within any of the applicable limited exceptions to the imposition of interest. Thus, we find no basis for abating interest.

HOLDINGS

1. The NOA is modified, as conceded by FTB on appeal, such that the adjustment (increase) to the couple's income should be $30,638, as opposed to the $31,206 amount set forth in the NOA.
2. Appellant has not shown that interest should be abated.

DISPOSITION

The NOA is modified in accordance with the holdings above. Otherwise, the NOA is sustained.

DocuSigned by:
Sara A Hosey
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Sara A. Hosey
Administrative Law Judge

We concur:

DocuSigned by:
Nguyen Dang
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Nguyen Dang
Administrative Law Judge

DocuSigned by:
Jeffrey I. Margolis
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Jeffrey I. Margolis
Administrative Law Judge

Date Issued: 2/6/2020